Perbadanan Pengurusan Megan Avenue 1 v Harcharan S Sidhu & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-11BNCVC-1–01 OF 2017
FAIZAH JAMALUDIN JC
29 MAY 2017

Civil Procedure — Appeal — Appeal to High Court — Whether management corporation had valid claim against persons who purchased and occupied parcel but not registered as proprietor on strata title of parcel — Strata Management Act 2013 to be read and construed together with Strata Title Act 1985

The appellant was a management corporation of the subdivided building known as Megan Avenue 1 ('the building') while the respondents were the purchasers of one of unit of the property located in the building ('the parcel'). The appellant made a claim against the respondents for the sum of RM81,931.81 being the outstanding sum for maintenance/service charges, sinking fund, sewerage charges and water charges, quit rent, insurance for the period and late payment interest from 18 May 2004–14 July 2015 ('outstanding charges'). The magistrate had dismissed the appellant's claim, hence this appeal. This appeal dealt with a novel and important question of whether a management corporation had a valid claim against persons who have purchased and occupied a parcel in a subdivided building but had yet to be registered as a proprietor on the strata title of the parcel. Hence, the issue to be determined were: (a) which legislation governing strata titles and the management of subdivided building is/are applicable to this case; (b) were the respondents 'proprietors' of the parcel under the legislation; and (c) whether the appellants could recover the sum incurred for the maintenance and management of the building from the respondents.

Held, allowing the appeal with cost of RM10,000 and setting aside the cost awarded by the magistrate against the appellant:

(1) The appellant was a management corporation and strata titles of the building had been issued thus the Building and Common Property (Maintenance and Management) Act 2007 was not applicable because it applied to join management bodies prior to the issuance of strata titles. It was evident from s 3 of the Strata Management Act 2013 ('the SMA 2013') that the SMA 2013 must be read and construed with the Strata Title Act 1985 ('the STA 1985'). The appellant was a management corporation that was established under the STA 1985 and vacant possession of the parcel had been delivered by the developer to the

respondent before the commencement of the SMA 2013. Hence, Part V of the SMA 2013 was applicable to the case (see paras 10, 12 & 14).

(2) Based on the definition of 'proprietor' in s 52(8) of the SMA 2013, the respondents were proprietors of the parcel because the respondents would be the persons who would receive the rent for the parcel if the parcel were rented out and they were the purchasers to be duly registered as proprietors on the strata title by the developer because the vendor was in arears of the maintenance and sinking fund charges (see para 24).

(3) Where the respondents had not discharged or fully discharged their liability, the appellant was entitled to recover any amount outstanding from the proprietor a court of competent jurisdiction or before a tribunal as a debt due to it pursuant to s 77(3) of the SMA 2013. The outstanding charges was a sum guaranteed by the respondents as a proprietor of the parcel under s 77 of the SMA 2013. Accordingly, the appellants can claim for the outstanding charges from the respondents and file a summons or a claim with a court of competent jurisdiction or with the strata management tribunal for recovery of the outstanding charges from the respondents. The appellant did not have to prove that the services were provided to the respondents. It was adequate for the appellants to show that the outstanding charges were incurred by them 'in the course of the exercise of any of its powers or functions or carrying out its duties of obligations' as a management corporation of the building (see paras 27 & 29).

(4) As the outstanding charges was recoverable by virtue of Part V of the SMA 2013, the six-year period had not expired yet. In addition, pursuant to s 78(2) of the SMA 2013, the appellant can file a summons or claim in for the outstanding charges in a court of competent jurisdiction or before the Strata Management Tribunal (see paras 36–37).

[Bahasa Malaysia summary

Perayu adalah perbadanan pengurusan bangunan yang disubbahagikan dikenali sebagai Megan Avenue 1 ('bangunan tersebut') manakala responden-responden adalah pembeli-pembeli salah satu unit hartanah yang terletak dalam bangunan tersebut ('parcel tersebut'). Perayu telah membuat tuntutan terhadap responden-responden untuk sejumlah RM81,931.81 iaitu jumlah tertunggak untuk caj penyelenggaraan/perkhidmatan, dana tenggelam, caj pembetungan dan caj air, sewa cukai, insurans untuk tempoh dan faedah bayaran lewat dari 18 Mei 2004–14 Julai 2015 ('caj-caj tertunggak'). Majistret telah menolak tuntutan perayu, justeru rayuan ini. Rayuan ini adalah berkenaan persoalan penting dan baru berhubung sama ada perbadanan pengurusan mempuyai tuntutan sah terhadap orang-orang yang telah membeli dan mendiami suatu parcel dalam bangunan yang disubbahagikan itu tetapi masih berlum berdaftar sebagai pemilik hakmilik strata parcel tersebut.

Justeru, isu untuk ditentukan adalah: (a) perundangan manakah yang mengawal hakmilik strata dan pengurusan bangunan yang disubbahagikan yang terpakai dalam kes ini; (b) responden-responden 'proprietors' parcel di bawah perundangan itu; dan (c) sama ada perayu-perayu boleh mendapat balik jumlah yang ditanggung untuk penyelenggaraan dan pengurusan bangunan daripada responden-responden.

Diputuskan, membenarkan rayuan dengan kos RM10,000 dan mengetepikan kos yang diawardkan oleh majistret terhadap perayu:

(1) Perayu adalah satu perbadanan pengurusan dan hakmilik strata bangunan tersebut telahpun dikeluarkan oleh itu Akta Bangunan dan Harta Bersama (Penyelenggaraan dan Pengurusan) 2007 adalah tidak terpakai kerana ia terpakai kepada badan pengurusan bersama sebelum keluaran hakmilik strata. Ia adalah jelas daripada s 3 Akta Pengurusan Strata 2013 ('APS 2013') bahawa APS 2013 perlu dibaca dan ditafsirkan bersama Akta Hakmilik Strata 1985 ('AHKS 1985'). Perayu adalah perbadanan pengurusan yang telah ditubuhkan di bawah AHKS 1985 dan milikan kosong parcel tersebut telah diserahkan oleh pemaju kepada responden sebelum APS 2013 berkuatkuasa. Justeru, Bahagian V APS 2013 adalah terpakai kepada kes tersebut (lihat perenggan 10, 12 & 14).

(2) Berdasarkan tafsiran 'proprietor' dalam s 52(8) APS 2013, responden-responden adalah pemilik-pemilik parcel tersebut kerana responden-responden akan menjadi orang-orang yang akan menerima sewa untuk parcel tersebut jika parcel tersebut disewakan dan mereka adalah pembeli-pembeli yang perlu berdaftar sebagai pemilik-pemilik ke atas hakmilik strata oleh pemaju kerana penjual adalah dalam tunggakan caj penyelenggaraan dan dana tenggelam (lihat perenggan 24).

(3) Di mana responden-responden telah melepaskan atau melepaskan sepenuhnya liabiliti mereka, perayu berhak mendapat balik mana-mana jumlah tertunggak daripada pemilik dari mahkamah yang mempunyai bidang kuasa yang kompeten atau di hadapan tribunal sebagai hutang yang perlu dibayar kepadanya menurut s 77(3) APS 2013. Caj-caj tertunggak adalah jumlah yang dijamin oleh responden-responden sebagai pemilik parcel tersebut di bawah s 77 APS 2013. Oleh demikian, perayu-perayu boleh menuntut caj-caj tertunggak tersebut daripada responden-responden dan memfailkan saman atau tuntutan di mahkamah yang mempunyai bidang kuasa kompeten atau dengan tribunal pengurusan strata untuk mendapat balik caj-caj tertunggak dari responden-responden. Perayu tidak perlu membuktikan bahawa perkhidmatan yang diberikan kepada responden-responden. Ia adalah mencukupi untuk perayu-perayu menunjukkan bahawa caj-caj tertunggak itu ditanggung oleh mereka 'in the course of the exercise of any of its powers or functions or carrying out its duties of obligations'

A sebagai perbadanan pengurusan bangunan tersebut (lihat perenggan 27 & 29).

(4) Oleh kerana caj-caj tertunggak tersebut boleh didapat balik menurut Bahagian V APS 2013, tempoh enam tahun masih belum luput. Tambahan pula, menurut s 78(2) APS 2013, perayu boleh memfailkan saman atau tuntutan untuk caj-caj tertunggak di mahkamah yang mempunyai bidang kuasa kompeten atau di hadap Tribunal Pengurusan Strata (lihat perenggan 36–37).]

Notes

For cases on appeal to High Court, see 2(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 1035–1052.

Cases referred to

Clayton's case [1814–23] All ER Rep 1; (1816) 1 Merc 572 (refd)
Footman Bower & Co Ltd, In re [1961] Ch 443, Ch D (refd)
Malayan Banking Berhad v Wembley Industries Holdings Berhad (Suit No 22–246 of 2009) (unreported), HC (refd)
Perantara Properties Sdn Bhd v JMC-Kelana Square and another appeal [2016] MLJU 1598; [2016] 5 CLJ 367, CA (refd)

Legislation referred to

Building and Common Property (Maintenance and Management) Act 2007 (repealed by Strata Management Act 2013)
Interpretation Acts 1948 and 1967 ss 6, 17A
Limitation Act 1953 s 6(1)
Strata Management Act 2013 ss 2, 3, 52, 52(8), 77, 77(3), 78, 78(2), (3), 82, 105(2), Part V, Chapter 3
Strata Titles Act 1985 ss 4, 39(1), (2), (3)

CY Chung (Yeap, Yong & Amy) for the appellant.
Karamjeet Singh (Harcharan S Sidhu & Assoc) for the respondents.

Faizah Jamaludin JC:

INTRODUCTION

[1] This is the appellant/plaintiff's appeal from the decision of the magistrate dismissing the appellant's claim with cost after full trial. This appeal deals with a novel and important question of whether a management corporation has a valid claim against persons who have purchased and occupied a parcel in a subdivided building but have yet to be registered as a proprietor on the strata title of the parcel.

[2] This court has concluded for the reasons stated in this judgment that the Strata Management Act 2013 ('the SMA 2013') read and construed together with the Strata Titles Act 1985 ('the STA 1985') applies to this case. As both counsel for the appellants and respondents were not able to refer to any case law relating to the question at hand, this court's decision is largely based on its interpretation of the relevant statutes as applied to the facts of this case.

OVERVIEW OF FACTS AND CLAIM

[3] The appellant's claim against the respondents is for the sum of RM81,931.81 being the outstanding sum for maintenance/service charges, sinking fund, sewerage charges and water charges, quit rent, insurance for the period and late payment interest ('outstanding charges') from 18 May 2004–14 July 2015.

[4] The appellant is a management corporation of the subdivided building known as Megan Avenue 1 ('building'). It came into existence on 6 May 2004 on the opening of the building's book of strata register pursuant to s 39(1) of the STA 1985. The appellant is a body corporate having perpetual succession and a common seal (s 39(2) of the STA 1985). It may sue and be sued (s 39(3) of the STA 1985).

[5] The respondents are the purchasers of the property known as Unit C-7–4, Block C, Megan Avenue 1, No 189 Jalan Tun Razak, 50400 Kuala Lumpur ('the parcel'). They have been occupying the parcel and carrying out their legal practice in the name of Messrs Harcharan S Sidhu & Assoc from the parcel since 2005.

[6] The crux of the respondents' defence against the appellant's claim is that they do not come within the definition of 'proprietor' under the STA 1985 and the SMA 2013 and are therefore, not liable for the outstanding charges.

[7] The learned magistrate had dismissed the appellant's claim on the grounds that:

(a) the respondents are not 'proprietors' of the parcel under the Strata Title Act 1985; and

(b) they are not beneficial owners of the parcel, notwithstanding having purchased the parcel for cash.

The learned magistrate in her judgment stated:

> It is very unfortunate that the hands of this court are bound by the interpretation of the word 'proprietor' which refers to 'registered proprietor'. In fact, it doesn't even

refer to 'beneficial owner' or even purchaser.

She also held that the appellant's claim was time-barred under the Limitation Act 1953 and dismissed its alternative claim based on the principles of quantum meruit because it failed to adduce any evidence during the trial that services were rendered by the appellant to the respondents.

[8] In order to decide whether the respondents are liable for the outstanding charges, this court must determine:

First: which legislation(s) governing strata titles and the management of subdivided building is/are applicable to this case;

Second: are the respondents 'proprietors' of the parcel under the legislation(s); and

Third: can the appellants recover the sum incurred for the maintenance and management of the building from the respondents?

APPLICABLE LEGISLATION

[9] The Strata Title Act 1985 ('the STA 1985') was the first legislation enacted by Parliament specifically to govern the subdivision of buildings into parcels and subsequent issuance of strata titles for the individual parcels in Peninsular Malaysia. In a paper entitled *Strata Management in Peninsular Malaysia: An Overview Strata Management in Peninsular Malaysia: An Overview* by Mazliza Mohamad, Azlinor Sufian, Nor Asiah Mohamed, the authors observed:

> In Malaysia, any person who purchases a parcel in a strata building development enters into a three-fold legal relationship; first, he is the individual owner of his parcel; secondly, he is a co-owner will all other owners of the common property and the land of the multi storey building development. Thirdly, he is automatically a member of the parcel owners' body to whom the management and maintenance of the multi storey building is entrusted.

[10] The Building and Common Property (Maintenance and Management) Act 2007 ('the BCPA') was then enacted supplement the STA 1985 in relation to the maintenance and management of subdivided buildings. The BPCA does not apply to this case because it applies to joint management bodies prior to the issuance of strata titles. The appellant is a management corporation and strata titles for the building have been issued.

[11] The Strata Titles (Amendment) Act 2013 ('the STAA 2013') and the

Strata Management Act 2013 ('the SMA 2013') came into force on 1 June 2015. The effect of both these Acts is that legislative provisions relating to the management and maintenance of subdivided buildings are placed wholly under the SMA 2013: (i) the STAA 2013 carved out all the provisions relating the management of subdivided buildings under the STA 1985 and placed it under the SMA 2013; and (ii) the SMA 2013 repealed the BPCA.

[12] The SMA 2013 is to be read and construed with the STA 1985. Section 3 of the SMA 2013 provides:

> Construction of the Act
>
> This Act shall be read and construed with Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with the provisions of this Act or the regulations made under this Act.

Accordingly, I have to respectfully disagree with the learned magistrate who held that the STA 1985 was repealed by the SMA 2013. To the contrary, as is evident from the provisions in s 3, the SMA 2013 must be read and construed with the STA 1985.

[13] Part V of the SMA 2013 applies to strata management after the existence of a management corporation. Part V provides:

> PART V
>
> STRATA MANAGEMENT AFTER THE EXISTENCE OF MANAGEMENT CORPORATION
>
> Chapter 1
>
> General
>
> 46 *Application of this Part*
>
> (1) This Part shall apply to a development area, where *before or after commencement of this Act* —
>
> (a) *vacant possession of a parcel* in a building or land intended for subdivision into parcels or *in a subdivided building or land has been delivered by the developer to a purchaser*; and
>
> (b) *the management corporation has come into existence under the provision of the Strata Title Act 1985.* (Emphasis added.)

[14] The appellant is a management corporation that came into existence under the provision of the STA 1985 and vacant possession of the parcel has been delivered by the developer to the respondent before the commencement of the SMA 2013. Therefore, Part V of the SMA 2013 applies to this case.

[15] Pursuant to s 17A of the Interpretation Acts 1948 and 1967 ('the IA'), a purposive approach must be taken in the interpretation of a provision of an Act. Its states as follows:

> 17A *Regard to be had to the purpose of the Act*
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether the purpose or object is expressly state in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[16] On the use of the purposive approach for the interpretation of statutes, David Wong Dak Wah JCA in delivering the Court of Appeal's decision in *Perantara Properties Sdn Bhd v JMC-Kelana Square and another appeal* [2016] MLJU 1598; [2016] 5 CLJ 367 remarked as follows:

> As stated in our opening remark, the task before us is one of interpretation of statute and the starting point must be s 17A of the Interpretation Acts 1948 and 1967 ...
>
> Section 17A embodies the concept of purposive approach which was explained by the House of Lords in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 (by majority) through Lord Griffiths as this:
>
> > The ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.
>
> We are fully aware that England does not have a s 17A but what Lord Griffiths said above describes what we understand as the purposive approach to interpreting statute. With that we now look at the aforesaid provisions.

ARE THE RESPONDENTS PROPRIETORS OF THE PARCEL?

[17] The SMA 2013 is to be read and construed with the STA 1985 in so far as they are not inconsistent with the provisions of the SMA 2013.

[18] Section 2 of the SMA 2013 states that 'proprietor' has the meaning assigned to in s 4 of the Strata Titles Act 1985.

'Proprietor' is defined in s 4 of the STA 1985 as follows:

'proprietor' refers to a parcel proprietor, that is to say, a person or body for the time being registered as the proprietor of a parcel, as well as to the proprietor of a provisional block, that is to say, a person or body for the time being registered as the proprietor of a provisional block, *unless expressly provided otherwise.*

[19] As Part V of the SMA 2013 applies to the facts of this case, the rule of statutory construction dictates that the applicable definition of 'proprietor' would be that which is expressly provided in Part V. Section 6 of the IA states that:

Where an Act or subsidiary legislation is divided into parts or chapters or otherwise, the fact and particulars of the division shall, without express mention thereof in the Act or subsidiary legislation, be taken notice of in all courts and for all purposes whatsoever.

[20] Section 52 of Part V of the SMA 2013 provides that:

52 *Proprietors to pay Charges and contribution to the sinking fund*

(1) *Each proprietor shall pay the Charges, and contribution to the sinking fund,* to the management corporation for the maintenance and management of the subdivided building or land and the common property of a development area.

...

(3) *The amount of the contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten per cent of the Charges.*

(8) *For the purposes of this section, 'proprietor' includes —*

(a) *the person* for the being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and *who would receive the same if the parcel were let to a tenant*;

(b) *a purchaser to be duly registered as a proprietor*; or

(c) a developer in respect of those parcels in the development area which have not been sold.

'Charges' is defined in s 3 of the SMA 2013 to mean:

'any money collected to be deposited into the maintenance account

'Purchaser' is defined in s 3 of the SMA 2013 to mean:

the purchaser of a parcel and includes any person or body who has acquired an interest as a purchaser in the parcel or any person or body for the time being registered as a parcel owner in the register of parcel owners under subsection 30(1). (Emphasis added.)

[21] Accordingly, for purposes of Part V of the SMA 2013, s 52 extends the definition of 'proprietor' to include, among others, a person or body 'who would receive the rent if the parcel were let to a tenant' or 'a purchaser to be duly registered as a proprietor'.

[22] Based on the evidence tendered during the trial at the magistrates' court, it is not disputed that the respondents had purchased the parcel. Therefore, under the SMA 2013, the respondents are purchasers of the parcel as they had acquired an interest as a purchaser in the parcel.

[23] The definition of 'proprietor' in the STA 1985 is not inconsistent with the definition of 'proprietor' in Part V of the SMA 2013. The definition of 'proprietor' in Part V of the SMA 2013 is extended to include:

(a) purchaser of the parcel to be duly registered as a proprietor; and

(b) persons who would receive the rent if the parcel was rented out to a tenant.

[24] Based on the definition of 'proprietor' in s 52(8) of the SMA 2013, I find that the respondents are proprietors of the parcel for the following reasons:

(a) the respondents would be the persons who would receive the rent for the parcel if the parcel were to be let out to a tenant; and

(b) they are purchasers to be duly registered as a proprietor. The respondents pleaded that when they purchased the parcel, they were not registered as proprietors on the strata title by the developer because the vendor was in areas of the maintenance and sinking fund charges.

CAN THE APPELLANTS RECOVER SUMS INCURRED FOR THE MAINTENANCE AND MANAGEMENT OF THE BUILDING FROM THE RESPONDENTS?

[25] Pursuant to s 82 of the SMA 2013, the maintenance fund and sinking fund set up in the name of the appellant under STA 1985 continues and is deemed to have been established under the SMA 2013.

> Chapter 6
>
> Transitional and saving provisions due to consequential amendments to the Strata Title Act 1985
>
> 82 *Existing maintenance fund or special account*
>
> Every account or fund established by the management corporation under the Strata Titles Act 1985 before the commencement of this Act shall continue and be deemed to have been established under this Act.

85 *Existing rules*

Any rules made under the Strata Titles Act 1985 and in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, continue in force as if the rules were made under this Act until they are revoked or repealed by regulations under this Act.

[26] Under Part V, s 77 of the SMA 2013, any payment lawfully incurred by the appellant as a management corporation 'in the course of the exercise of any of its powers or functions or carrying out its duties or obligations' is *guaranteed* by the proprietors for such proportion of the money so incurred as the share units of his parcel bear to the aggregate share units.

[27] Where the respondents have not discharged or fully discharged their liability, the appellant is entitled to recover any amount outstanding from the proprietor a court of competent jurisdiction or before a tribunal as a debt due to it pursuant to s 77(3) of the SMA 2013.

Section 77 of the SMA 2013 stipulates as follows:

77(1) The payment of any amount lawfully incurred by the management corporation ... in the course of the exercise of any of its powers or functions or carrying out its duties or obligations shall by virtue of this section be guaranteed by the proprietors for the time being constituting the management corporation ...

(2) *Each proprietor shall be liable under such guarantee referred to in subsection (1) only for such proportion of the money so incurred as the share units of his parcel or the provisional share units of his provisional block bear to the aggregate share units.*

(3) Where any proprietor has not discharged or fully discharged his liability for the purpose of subsection (1), the management corporation ... shall be entitled to recover from the proprietor in a court of competent jurisdiction or before a Tribunal as a debt due to it.

[28] Pursuant to Part V s 78 of the SMA 2013, the appellant may serve on the respondents as proprietors of the parcel a written notice of demand for payment for the outstanding charges within a period which is not less than two weeks from the date of service of the notice ('notice period'). If the outstanding charges remains unpaid at the end of the notice period the appellant may file a summons or claim in a court of competent jurisdiction or a tribunal for the recovery of the amount outstanding.

The proprietor also commits an offence under s 78(3) of the SMA 2013 in failing to comply with the written notice. Section 78 states as follows:

78(3) Any proprietor who, without reasonable excuse, fails to comply with the written notice under subsection (1) commits an offence and shall, on conviction, be

liable to a fine not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

[29] The outstanding charges is a sum guaranteed by the respondents as a proprietor of the parcel under s 77 of the SMA 2013. Accordingly, the appellants can claim for the outstanding charges from the respondents and file a summons or a claim with a court of competent jurisdiction or with the Strata Management Tribunal for recovery of the outstanding charges from the respondents. This court has to respectfully disagree with the finding of the learned magistrate and holds that the appellant does not have to prove that the services were rendered to the respondents. It is sufficient for the appellants to show that the outstanding charges were incurred by them 'in the course of the exercise of any of its powers or functions or carrying out its duties or obligations' as a management corporation of the building.

IS THE APPELLANT'S CLAIM BARRED UNDER THE LIMITATION ACT 1953?

[30] The respondents' argue that the appellant's claim is partially barred because six years had expired from the date the cause of action accrued.

[31] Section 6(1) of the Limitation Act 1953 ('the LA 1953') provides as below:

> 6(1) *Limitation of actions of contract and tort and certain other actions*
>
> Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —
>
> (a) actions founded on a contract or on tort;
>
> (b) actions to enforce a recognisance;
>
> (c) actions to enforce an award;
>
> (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.
>
> (2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.

[32] The appellant's submit that where an action is based on fraud, concealment or mistake, time doesn't start to run until discovery of the concealment or mistake by the appellant. The appellants said that they only became aware of the sale of the parcel in 2014 when they received a letter dated 4 November 2014 from the respondents' solicitors, Messrs Harcharan S Sidhu

& Assoc, where it enclosed a letter dated 3 September 2003 from the respondents' solicitors to the developer. A

[33] They also aver that the management and the sinking fund accounts and the account relating to the charges on behalf of the appellant for the proprietors in the building including the respondents is a running account. They rely on the decision of YA Tuan Lee Swee Seng in *Malayan Banking Berhad v Wembley Industries Holdings Berhad* (KL High Court Suit No 22–246 of 2009) (unreported) where he said that the position is consistent with the common law position enunciated in the rule in *Clayton's case* [1814–23] All ER Rep 1; (1816) 1 Merc 572, which was referred to with approval in *In re Footman Bower & Co Ltd* [1961] Ch 443 where Buckley J held: B C

> ... the rule known as *Clayton's case* applied to any current account and is in my judgment, applicable to the present case. Consequently, in accordance with that rule, the various credits are prima facie to be treated as applied in the order in which the debits and credits are set against each other in the account, each new credit being treated as discharging the earliest outstanding debit. D

[34] PW1 testified at the trial that the respondents made part payment towards the outstanding statement of account vide MBB cheque No 2266060 in respect of the water bill and sewerage charges on 31 December 2012. E

[35] Based on the facts of the case, I agree that the relevant accounts for the outstanding charges is a running account, as each credit into the account would be treated as discharging the earliest outstanding debit in the account. F

[36] The appellants were unable to bring an action against the respondents as 'proprietors' of the parcel before coming into force of the SMA 2013 on 1 June 2015. Part V of the SMA 2013 extended the definition of 'proprietor' beyond a 'registered proprietor' of a parcel to include purchasers and those who would receive rent if the parcel were rented out to a tenant. In my view, as the outstanding charges is recoverable by virtue of Part V of the SMA 2013, the six-year period has not expired yet. G

[37] Additionally, pursuant to s 78(2) of the SMA 2013, the appellant can file a summons or claim in for the outstanding charges in a court of competent jurisdiction or before the Strata Management Tribunal ('tribunal'). Part V, Chapter 3 at s 105(2) of the SMA 2013 expressly state: H

> 105(2) For avoidance of doubt, the Limitation Act 1953 [Act 254] shall not apply to proceedings of the Tribunal. I

[38] As a management corporation can choose to either file a claim in the tribunal or court of competent jurisdiction, I am of the view that it can be

implied that the Limitation Act shall also not apply to proceedings of the court in relation to the appellant's claim for the outstanding charges. Otherwise, there would be a discrepancy in what charges can be claimed at the tribunal and at court. As discussed earlier, s 17A of the IA embodies the concept of purposive approach in statutory interpretation. The long title of the SMA 2013 states that it is:

> An Act to provide for the proper maintenance and management of buildings and common property, and for related matters.

[39] Surely it cannot be the intention of the SMA 2013 for a management corporation's claim against the proprietor of parcel, which it could only make from 1 June 2015 onwards by virtue of the extension of the definition of 'proprietor' in Part V of the SMA 2013, is time-barred if the claim in made in court whereas if the claim was made at the tribunal, if would not be time-barred. This would defeat the SMA 2013's stated purpose of providing for the proper maintenance and management of the buildings and common property.

DECISION

[40] For the reasons stated above, this court finds that the respondents are proprietors of the parcel pursuant to s 52(8) of the SMA 2013.

[41] The outstanding charges is guaranteed by the respondents as proprietors of the parcel. And for the reasons discussed above, the appellant's claim for the outstanding charges from the respondents is not time-barred. Accordingly, the respondents are liable to pay the outstanding charges to the appellants.

[42] Having found that the respondents are proprietors of the parcel and that the respondents guarantee the outstanding charges pursuant to the provisions of the SMA 2013, it would not be necessary for this court to address the appellant's argument that the respondents are beneficial owners of the parcel and that the outstanding charges is to be paid by the respondents to the appellants pursuant to the principle of quantum meriut.

[43] The appellant's appeal against the magistrate's decision is allowed with cost of RM10,000 to be paid by the respondents to the appellant forthwith subject to payment of the allocator fee. The cost awarded by the magistrate against the appellant is set aside.

ORDER

[44] So ordered accordingly

Appeal allowed with cost of RM10,000 and the cost awarded by the magistrate was set aside.

Reported by Jacqueleen Kho